

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRIAN TUITT,

Plaintiff,

-v-

9:11-CV-0776
(DNH/TWD)

P. CHASE, Lieutenant, Clinton Annex;
MR. LOPEZ, Senior Correction Counselor of
Clinton-Annex; N. BENWARE, Counselor,
Social Worker; LIEMUEX, Correction Officer,
Clinton-Annex; REDEL, Correction Officer,
Clinton Annex; and JOHN DOE 1-3, Clinton
Annex,

Defendants.

APPEARANCES:

OF COUNSEL:

BRIAN TUITT, 06-A-1963
Plaintiff pro se
Mid-State Correctional Facility
P.O. Box 2500
Marcy, NY 13403

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

CHRISTOPHER W. HALL, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 30, 2013, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised, by

Report-Recommendation that defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) be granted in part and denied in part. Plaintiff timely filed objections to the Report-Recommendation. Following the issuance of the Report-Recommendation, plaintiff also filed an amended complaint on February 21, 2013. Dkt. No. 40.

Based upon a de novo review, the Report-Recommendation is accepted. See 28 U.S.C. § 636(b)(1). Plaintiff's amended complaint will be forwarded to Magistrate Judge Dancks for review. The defendants are directed not to respond to the amended complaint until further notice from the court.

Therefore, it is

ORDERED that

1. Defendants' motion to dismiss is **GRANTED in part** and **DENIED in part**;
2. The following claims are **DISMISSED without leave to amend**: (1) all claims against defendants in their official capacities; (2) all claims alleging conspiracy; (3) all claims alleging violations of New York State Department of Correctional Services' directives; (4) all claims alleging verbal harassment; (5) all Eighth Amendment claims; (6) the claim alleging violations of federal criminal statutes; and (7) the due process claim against defendants Liemuex and Chase regarding the misbehavior report and disciplinary hearing;
3. The following claims are **DISMISSED with leave to amend**: (1) the retaliation claim against defendants Lopez, Benware, and Chase regarding plaintiff's transfer to a different facility; (2) the retaliation claims against defendant Redel regarding access to the law library and a notary; (3) the retaliation claim against defendant Chase regarding the failure to remove the "SOP" (Sex Offender Program) sign; (4) the equal protection claim regarding removal from the Sex Offender Counseling and Treatment Program; (5) the

retaliation claim regarding placement in Involuntary Protective Custody; (6) the interference with mail claim; and (7) the access to courts claim;

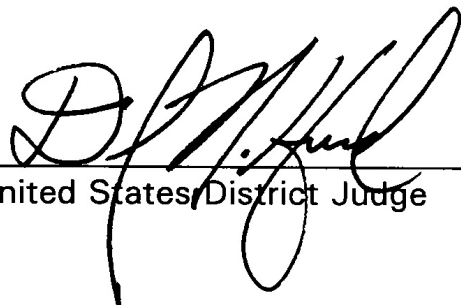
4. Defendants are directed to **respond** to the following claims: (1) the retaliation claims against defendants Lopez, Benware, Chase, and Liemuex regarding the magazine incident; (2) the retaliation claim against defendants Lopez, Benware, and Chase regarding plaintiff's removal from the Sex Offender Counseling and Treatment Program; and (3) the retaliation claim against defendants Lopez and Benware regarding plaintiff's placement in the general population;

5. Plaintiff's amended complaint, Dkt. No. 40, be forwarded to Magistrate Judge Dancks for review; and

6. The defendants are directed not to respond to the amended complaint until further notice from the court.

The Clerk is directed to serve a copy of this Decision and Order in accordance with the Local Rules.

IT IS SO ORDERED.


United States District Judge

Dated: March 8, 2013
Utica, New York.